

who was authorized to make up an issue upon the case, and send it for trial before a jury. 1786, ch. 49, s. 4. And, as if to leave the door wide open for any citizen to come in and obtain a judicial decision upon a claim of any kind which he might have against the State, any claimant was allowed, in the manner prescribed, to commence and prosecute an action at law against the State; 1786, ch. 53; which law remained in force until within a short time past. 1820, ch. 210.

The Confiscation Acts divested the Mollisons of all their property, debts only excepted, upon the ground that they were alien enemies; and, consequently, those very Acts, as to all such property, virtually declared them to be civilly dead. The question then arises, how far did those laws really impede or embarrass Hepburn in the collection of his debt? It must be admitted, that but for the confiscation of the property of the Mollisons, Hepburn might, by an attachment, have taken any part of it, real or personal, as well as their debts, in satisfaction of his claim. But the

117 *Confiscation Acts allowed him to come in and have his claim passed by the commissioners, or the Auditor-General; and so far, therefore, his remedy was changed without being impaired.

In regard to this change of remedies, it is evident that the Confiscation Acts considered the Mollisons as deceased debtors, and the State as their trustee for the benefit of their creditors, citizens of this country; and as administering their assets according to the principles of equity. Upon a creditor's bill, in this Court, all the assets of the deceased debtor are made subject to the payment of his debts, so that the personalty, or natural fund may, at the instance and for the benefit of the heirs and devisees, be first applied. And all his creditors are called in, by a general notice; and their claims, on being proved and adjusted, are ordered to be paid from the proceeds of the sale of the estate. If any claims are not brought in before a distribution is actually made, they are excluded from any satisfaction in that case. Such is the course of administering the estate of a deceased debtor in Chancery. *Hammond v. Hammond*, 2 Bland, 307; *Tessier v. Wyse*, ante, 28. The course of proceeding prescribed by the Confiscation Acts, is strikingly analogous to it; those Acts requiring that the creditors should endeavor first to obtain satisfaction from the debts due to their debtor in this State; and on their being no such debts, that their claims against the property taken by the State, should be exhibited within a limited time, or be excluded; and should be legally proved, if required, to the satisfaction of the jury.

Considering the actual situation of the Mollisons, and the whole subject in this point of view, it is manifest that Hepburn's remedy for the recovery of his debt, was in no manner whatever materially impaired or obstructed; that although in some respects dif-